

# Capacity Matters–Elements of Legal Tools

	<i>Why</i>	<i>Formalities</i>	<i>Capacity</i>	<i>Who Decides</i>	<i>Other Decision-Makers</i>	<i>Duration</i>
<b>Power of Attorney (PoA)</b>	To handle the donor's financial affairs. It may be to handle a specific task, for a pre-determined amount of time, or be general in nature.	Written, signed, dated, and witnessed. The person named as the attorney or that person's spouse cannot be a witness, nor can the spouse of the donor.	The donor must have full mental capacity.	This type of PoA is null and void as soon as the donor loses mental capacity.		The PoA may contain an end date or be valid only to handle a certain transaction. It will become null and void if the donor loses mental capacity.
<b>Enduring Power of Attorney–Immediate</b>	To provide the donor with a trusted person to handle his/her financial affairs immediately and to continue into the future, after the donor loses mental capacity.	Written, signed, dated, and witnessed. The person named as the attorney or that person's spouse cannot be a witness, nor can the spouse of the donor. This PoA must state that it is to continue regardless of any mental incapacity or infirmity on the part of the donor.	The donor must have capacity at the time the Enduring PoA is signed. It takes effect immediately and continues after capacity is lost.	The donor can name a person or persons to decide about mental incapacity, including the person named as the attorney. He/she or they must sign a written declaration that the specified event has occurred.	If no one is named to determine incapacity or the persons named cannot or are incapable of determining mental capacity, then two medical practitioners may declare in writing that the specified event has occurred.	The Enduring PoA will continue until the donor revokes it, if still mentally capable, or if the donor or attorney dies, or if the attorney becomes the subject of a trusteeship order. Also, any interested party may apply to the court for an order ending an Enduring PoA.

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<b>Enduring Power of Attorney–“Springing”</b>	To provide the donor with a trusted person to handle financial affairs <b>only</b> when the donor becomes incapacitated at some future time.	Written, dated, signed, and witnessed. The person named as the attorney, that person’s spouse, and the spouse of the donor cannot be a witness. This PoA must state that it is only to spring into effect on the mental incapacity of the donor or some other specified event.	The Springing PoA will <b>only</b> come into effect when the donor loses mental capacity or when a specified event occurs.	A Springing PoA can name one or more persons to decide about capacity and that can include the attorney. There must be a written declaration that the specified event has occurred.	If no one is named to determine incapacity or the person(s) named cannot or are incapable of determining mental capacity, then two medical practitioners may declare in writing that the specified event has occurred.	A Springing PoA comes into effect at the time of a specified occurrence, usually mental incapacity. The donor may revoke it prior to losing capacity; it is null and void when the donor dies. Any interested party may apply to the court for an order terminating a Springing PoA.
<b>Personal Directives</b>	To appoint an agent to make decisions about personal matters for the maker when he/ she loses capacity.	Written, signed, dated, and witnessed. The agent and the agent’s spouse cannot be witnesses nor can the spouse of the maker. There are other exceptions.	The maker must have the mental capacity to understand the nature and effect of a PD.	A PD can name a person to decide about mental capacity. That person must consult with a physician or psychologist before making the determination. He/she must sign a Declaration of Incapacity form, which must be kept by the physician or psychologist. A copy of this form must be given to the maker, among others.	If no one is named to determine incapacity, then two service providers, one of which must be a physician or psychologist may make the determination. They must sign a Declaration of Incapacity form, which must be kept by the physician or psychologist. A copy of this form must be given to the maker, among others.	The Personal Directive ends when the maker <ul style="list-style-type: none"> <li>&gt; dies,</li> <li>&gt; revokes it,</li> <li>&gt; regains capacity;</li> </ul> when the agent dies or quits; or when a court orders that it ceases to have effect.

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Supported Decision-Making	To appoint a supporter to help make decisions about personal matters. It cannot be used for help with financial matters.	A Supported Decision-Making Authorization form is completed. The form is available online and from the Public Guardian's office.	The supported adult must have mental capacity.			<p>A Supported Decision-Making Authorization ends</p> <ul style="list-style-type: none"> <li>&gt; when the supported adult signs a termination form,</li> <li>&gt; when his/her capacity becomes further diminished and a Court appoints a Co-Decision-Maker, or</li> <li>&gt; when he/she loses capacity altogether.</li> </ul> <p>Then, a Personal Directive would come into effect or the court could appoint a guardian.</p>
Co-Decision-Making	To appoint a co-decision-maker to help make decisions about personal matters. It cannot be used for help with financial matters.	A court order is required to appoint a co-decision-maker.	The assisted adult has diminished mental capacity, but can still make decisions about personal matters with support.	The proposed assisted adult must take part in a Capacity Assessment Report (CAP), which is completed by a medical doctor, psychologist, or other health care professional trained to be a capacity assessor.	Prior to a court application, the paperwork is submitted to a Review Officer (RO) with the Office of the Public Guardian. The RO meets with the proposed assisted adult, notifies certain family members about the application, and prepares a report for the court. The RO cannot share the CAP with others.	<p>A Co-Decision-Making Order continues until</p> <ul style="list-style-type: none"> <li>&gt; the assisted adult signs a Withdrawal of Consent form with the court,</li> <li>&gt; a Guardianship Order is granted, or</li> <li>&gt; a Personal Directive comes into effect.</li> </ul>